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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

LOK SABHA

BILL NO. 280 OF 2017

The following Bills were introduced in Lok Sabha on 28th Dec., 2017

A Bill to amend the Insolvency and Bankruptcy Code, 2016.

BE it enacted by Parliament in the Sixty-eighth Year of the Republic of India as follows:—

Short title and commencement.

1. (*1*) This Act may be called the Insolvency and Bankruptcy Code (Amendment) Act, 2017.

(*2*) It shall be deemed to have come into force on the 23rd day of November, 2017.

Amendment of section 2.

31 of 2016.

2. In the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the principal Act), in section 2,—

(*i*) in clause (*d*), the word "and" shall be omitted;

(*ii*) for clause (*e*), the following clauses shall be substituted, namely:—

"(*e*) personal guarantors to corporate debtors;

(*f*) partnership firms and proprietorship firms; and

(*g*) individuals, other than persons referred to in clause (*e*),".

Amendment of section 5.

3. In section 5 of the principal Act,—

(*a*) for clause (25), the following clause shall be substituted, namely:—

'(*25*) "resolution applicant" means a person, who individually or jointly with any other person, submits a resolution plan to the resolution professional pursuant to the invitation made under clause (*h*) of sub-section (*2*) of section 25;';

(*b)* in clause (26), for the words "any person", the words "resolution applicant" shall be substituted.

Amendment of section 25.

4. In section 25 of the principal Act, in sub-section (*2*), for clause (*h*), the following clause shall be substituted, namely:—

"(*h*) invite prospective resolution applicants, who fulfil such criteria as may be laid down by him with the approval of committee of creditors, having regard to the complexity and scale of operations of the business of the corporate debtor and such other conditions as may be specified by the Board, to submit a resolution plan or plans.".

Insertion of new section 29A.

5. After section 29 of the principal Act, the following section shall be inserted, namely:—

Persons not eligible to be resolution applicant.

"29A. A person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert with such person—

(*a)* is an undischarged insolvent;

(*b*) is a wilful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949; 10 of 1949.

(*c*) has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 and at least a period of one year has lapsed from the date of such classification till the date of commencement of the corporate insolvency resolution process of the corporate debtor: 10 of 1949.

Provided that the person shall be eligible to submit a resolution plan if such person makes payment of all overdue amounts with interest thereon and charges relating to non-performing asset accounts before submission of resolution plan;

(*d*) has been convicted for any offence punishable with imprisonment for two years or more;

(*e*) is disqualified to act as a director under the Companies Act, 2013; 18 of 2013.

(*f*) is prohibited by the Securities and Exchange Board of India from trading in securities or accessing the securities markets;

(*g*) has been a promoter or in the management or control of a corporate debtor in which a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place and in respect of which an order has been made by the Adjudicating Authority under this Code;

(*h*) has executed an enforceable guarantee in favour of a creditor in respect of a corporate debtor against which an application for insolvency resolution made by such creditor has been admitted under this Code;

(*i*) has been subject to any disability, corresponding to clauses (*a*) to (*h*), under any law in a jurisdiction outside India; or

(*j*) has a connected person not eligible under clauses (*a*) to (*i*).

Explanation.—For the purposes of this clause, the expression "connected person" means—

(*i*) any person who is the promoter or in the management or control of the resolution applicant; or

(*ii*) any person who shall be the promoter or in management or control of the business of the corporate debtor during the implementation of the resolution plan; or

(*iii*) the holding company, subsidiary company, associate company or related party of a person referred to in clauses (*i*) and (*ii*):

Provided that nothing in clause (*iii*) of this *Explanation* shall apply to—

(*A*) a scheduled bank; or

(*B*) an asset reconstruction company registered with the Reserve Bank of India under section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; or 54 of 2002.

(*C*) an Alternate Investment Fund registered with the Securities and Exchange Board of India.".

Amendment of section 30.

6. In section 30 of the principal Act, for sub-section (*4*), the following sub-section shall be substituted, namely:—

"(*4*) The committee of creditors may approve a resolution plan by a vote of not less than seventy-five per cent. of voting share of the financial creditors, after considering its feasibility and viability, and such other requirements as may be specified by the Board:

Provided that the committee of creditors shall not approve a resolution plan, submitted before the commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017, where the resolution applicant is ineligible under section 29A and may require the resolution professional to invite a fresh resolution plan where no other resolution plan is available with it: Ord. 7 of 2017.

Provided further that where the resolution applicant referred to in the first proviso is ineligible under clause (*c*) of section 29A, the resolution applicant shall be allowed by the committee of creditors such period, not exceeding thirty days, to make payment of overdue amounts in accordance with the proviso to clause (*c*) of section 29A:

Provided also that nothing in the second proviso shall be construed as extension of period for the purposes of the proviso to sub-section (*3*) of section 12, and the corporate insolvency resolution process shall be completed within the period specified in that sub-section.".

Amendment of section 35.

7. In section 35 of the principal Act, in sub-section (*1*), in clause (*f*), the following proviso shall be inserted, namely:—

"Provided that the liquidator shall not sell the immovable and movable property or actionable claims of the corporate debtor in liquidation to any person who is not eligible to be a resolution applicant.".

Insertion of new section 235A.

8. After section 235 of the principal Act, the following section shall be inserted, namely:—

Punishment where no specific penalty or punishment is provided.

"235A. If any person contravenes any of the provisions of this Code or the rules or regulations made thereunder for which no penalty or punishment is provided in this Code, such person shall be punishable with fine which shall not be less than one lakh rupees but which may extend to two crore rupees.".

Amendment of section 240.

9. In section 240 of the principal Act, in sub-section (*2*),—

(*i*) after clause (*s*), the following clause shall be inserted, namely:—

"(*sa*) other conditions under clause (*h*) of sub-secton (*2*) of section 25;";

(*ii*) after clause (*w*), the following clause shall be inserted, namely:—

"(*wa*) other requirements under sub-section (*4*) of section 30;".

Repeal and savings.

10. (*1*) The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017 is hereby repealed. Ord 7 of 2017.

(*2*) Notwithstanding such repeal, anything done or any action taken under the Insolvency and Bankruptcy Code, 2016, as amended by the said Ordinance, shall be deemed to have been done or taken under the corresponding provisions of the said Code, as amended by this Act. 31 of 2016.

STATEMENT OF OBJECTS AND REASONS

The Insolvency and Bankruptcy Code, 2016 (the Code) was enacted, *inter alia*, to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner. The provisions relating to insolvency resolution for corporate persons (Part II of the Code), regulation of insolvency professionals, agencies, information utilities and establishment of the Insolvency and Bankruptcy Board of India (the Board) (Part IV of the Code) and Miscellaneous provisions (Part V of the Code) have been brought into force, in phases. Part III of the Code, which deals with insolvency resolution and bankruptcy for individuals and partnership firms is yet to be commenced.

2. The provisions for insolvency resolution and liquidation of a corporate person in the Code did not restrict or bar any person from submitting a resolution plan or participating in the acquisition process of the assets of a company at the time of liquidation. Concerns have been raised that persons who, with their misconduct contributed to defaults of companies or are otherwise undesirable, may misuse this situation due to lack of prohibition or restrictions to participate in the resolution or liquidation process, and gain or regain control of the corporate debtor. This may undermine the processes laid down in the Code as the unscrupulous person would be seen to be rewarded at the expense of creditors. In addition, in order to check that the undesirable persons who may have submitted their resolution plans in the absence of such a provision, responsibility is also being entrusted on the committee of creditors to give a reasonable period to repay overdue amounts and become eligible.

3. The Code prescribes for the insolvency resolution and bankruptcy for individuals and partnership firms, which are proposed to be implemented in a phased manner on account of the wider impact of these provisions. In the first phase, the provisions would be extended to personal guarantors of corporate debtors to further strengthen the corporate insolvency resolution process and a clear enabling provision for the purpose has been provided in the Bill.

4. It was accordingly decided to make amendments to the Insolvency and Bankruptcy Code, 2016. Since Parliament was not in session and immediate action was required to be taken, the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017 was promulgated by the President on the 23rd November, 2017.

5. The Insolvency and Bankruptcy Code (Amendment) Bill, 2017 which seeks to replace the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017, *inter alia*, provide for the followings, namely:—

(*a*) facilitate phased implementation of the provisions of the Code to corporate persons, individuals and partnership firms;

(*b*) provide clarity as to the persons who can submit a resolution plan in response to an invitation made by the resolution professional;

(*c*) enable the resolution professional, with the approval of the committee of creditors, to specify the eligibility conditions (including such conditions as may be specified by the Board) while inviting resolution plans from prospective resolution applicants keeping in view the scale and complexity of operations of business of the corporate debtor to avoid frivolous applicants;

(*d*) provide for making certain persons ineligible for being a resolution applicant;

(*e*) provide that the committee of creditors shall approve the resolution plan by a vote of not less than seventy-five per cent. of voting share of the financial creditors after considering the feasibility and viability of the resolution plan in addition to such requirements as may be specified by the Board, before according its approval;

(*f*) disallow the sale of property to a person who is ineligible to be a resolution applicant in case of liquidation of corporate debtor;

(*g*) provide punishment for contravention of the provisions where no specific penalty or punishment is mentioned;

(*h*) consequential amendments conferring power upon the Board to make regulations.

6. The Bill seeks to achieve the above objectives.

NEW DELHI; ARUN JAITLEY.
The 26*th December,* 2017.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 9 of the Bill proposes to amend section 240 of the Code to confer power upon the Insolvency and Bankruptcy Board of India to specify—(*i*) other conditions under clause (*h*) of sub-section (*2*) of section 25; and (*ii*) other requirements under sub-section (*4*) of section 30, of the Code.

2. The matters in respect of which the regulations may be made are matters of procedure and administrative detail and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

Memorandum explaining the modifications contained in the bill to replace the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017

The Insolvency and Bankruptcy Code (Amendment) Bill, 2017, which seeks to repeal and replace the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017 (the Ordinance), proposes to make the following modifications apart from modifications of consequential or drafting nature in the provisions contained in the Ordinance, namely:—

(a) in clause 5 of the Bill, in section 29A of the Insolvency and Bankruptcy Code, 2016 (the Code),—

(i) the words "with such person, or any person who is a promoter or in the management or control of", after the word "jointly" have been replaced with words "or in concert with" in order to bring more clarity, when read with clause (*j*) of the provision relating to connected persons;

(ii) in clause (*b*), the words "has been identified as" have been replaced with the word "is" so as to clarify that the applicability is during the currency of the disability;

(iii) in clause (*c*), the words "whose account is" have been replaced by the words "has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter" and the words "period of one year or more has lapsed from the date of such classification" have been replaced with words "at least a period of one year has lapsed from the date of such classification till the date of commencement of the corporate insolvency resolution process of the corporate debtor". In addition, the words "and who has failed to make the payment of all overdue amounts with interest thereon and charges relating to non-performing asset before submission of the resolution plan" have been replaced with a proviso to the clause. These changes have been made with a view to bring clarity on the extent of coverage and provide reasonable time for a person having non-performing asset to repay overdue amounts;

(iv) in clauses (*e*) and (*f*), the words "has been" have been replaced with the word "is" so as to clarify that the applicability is during the currency of the disability;

(v) in clause (*g*), the words "indulged in" have been replaced by the words "been a promoter or in the management or control of a corporate debtor in which a", and the words "extortionate credit transaction" and "has taken place and" have been inserted after the words "undervalued transaction" and "fraudulent transaction", respectively, in order to bring clarity and further inclusiveness for extortionate credit transactions;

(vi) in clause (*h*), the words "under insolvency resolution process or liquidation" have been replaced by the words "against which an application for insolvency resolution made by such creditor has been admitted" in order to clarify the extent of applicability of the disability on guarantors;

(vii) clause (*j*) has been renumbered as clause (*i*) are relevant reference in the clause have been modified from "clauses (*a*) to (*i*)" to "clauses (*a*) to (*h*)" on account of the renumbering so as to provide clarity;

(viii) clause (*i*) has been renumbered as clause (*j*) and the words "where any connected person in respect of such person meets any of the criteria specified in" have been replaced with words "has a connected person not eligible under" to bring clarity;

(ix) a proviso to the renumbered clause (*j*) has been inserted to exclude a scheduled bank; asset reconstruction company registered with the Reserve Bank of India under section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; or an Alternate Investment Fund registered with Securities and Exchange Board of India, from the provisions of clause (*iii*) of the *Explanation;*

(b) in clause 6 of the Bill,—

(i) in the proviso to sub-section (*4*) of section 30 of the Code, the words "where no other resolution plan is available with it, require the resolution professional to invite a fresh resolution plan" have been replaced with the words "require the resolution professional to invite a fresh resolution plan where no other resolution plan is available with it" in order to provide clarity of language;

(ii) two new provisos have been inserted after the existing proviso to sub-section (*4*) of section 30 to provide that the resolution applicant referred to under first proviso, if ineligible on account of clause (*c*) of section 29A shall be allowed by the committee of creditors such period not exceeding thirty days, to make payment of overdue amounts as per proviso to clause (*c*) of section 29A. The committee of creditors are required to ensure that in a case where the time limit has been extended for the purpose, the overall time limit provided under section 12 of the Code shall not be exceeded.

BILL NO. 247 OF 2017

A Bill to protect the rights of married Muslim women and to prohibit divorce by pronouncing talaq *by their husbands and to provide for matters connected therewith or incidental thereto.*

BE it enacted by Parliament in the Sixty-eighth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

Short title and commencement.

1. (*1*) This Act may be called the Muslim Women (Protection of Rights on Marriage) Act, 2017.

(*2*) It shall extend to the whole of India except the State of Jammu and Kashmir.

(*3*) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In this Act, unless the context otherwise requires,— Definitions.

(*a*) "electronic form" shall have the same meaning as assigned to it in clause (*r*) of sub-section (*1*) of section 2 of the Information Technology Act, 2000; 21 of 2000.

(*b*) "*talaq*" means *talaq-e-biddat* or any other similar form of *talaq* having the effect of instantaneous and irrevocable divorce pronounced by a Muslim husband; and

(*c*) "Magistrate" means a Magistrate of the First Class exercising jurisdiction under the Code of Criminal Procedure, 1973, in the area where a married Muslim woman resides. 2 of 1974.

CHAPTER II

DECLARATION OF *TALAQ* TO BE *VOID* AND ILLEGAL

Talaq to be *void* and illegal.

3. Any pronouncement of *talaq* by a person upon his wife, by words, either spoken or written or in electronic form or in any other manner whatsoever, shall be *void* and illegal.

Punishment for pronouncing *talaq*.

4. Whoever pronounces *talaq* referred to in section 3 upon his wife shall be punished with imprisonment for a term which may extend to three years and fine.

CHAPTER III

PROTECTION OF RIGHTS OF MARRIED MUSLIM WOMEN

Subsistence allowance.

5. Without prejudice to the generality of the provisions contained in any other law for the time being in force, a married Muslim woman upon whom *talaq* is pronounced, shall be entitled to receive from her husband such amount of subsistence allowance for her and dependent children as may be determined by the Magistrate.

Custody of minor children.

6. Notwithstanding anything contained in any other law for the time being in force, a married Muslim woman shall be entitled to custody of her minor children in the event of pronouncement of *talaq* by her husband, in such manner as may be determined by the Magistrate.

Offences to be cognizable and non-bailable.

2 of 1974. **7.** Notwithstanding anything contained in the Code of Criminal Procedure, 1973, an offence punishable under this Act shall be cognizable and non-bailable within the meaning of the said Code.

STATEMENT OF OBJECTS AND REASONS

The Supreme Court in the matter of Shayara Bano *Vs.* Union of India and others and other connected matters, on 22nd August, 2017, in a majority judgement of 3:2, set aside *talaq-e-biddat* (three pronouncements of *talaq*, at one and the same time) practiced by certain Muslim husbands to divorce their wives. This judgement gave a boost to liberate Indian Muslim women from the age-old practice of capricious and whimsical method of divorce, by some Muslim men, leaving no room for reconciliation.

2. The petitioner in the above said case challenged, *inter alia*, *talaq-e-biddat* on the ground that the said practice is discriminatory and against dignity of women. The judgement vindicated the position taken by the Government that *talaq-e-biddat* is against constitutional morality, dignity of women and the principles of gender equality, as also against gender equity guaranteed under the Constitution. The All India Muslim Personal Law Board (AIMPLB), which was the 7th respondent in the above case, in their affidavit, *inter alia*, contended that it was not for the judiciary to decide matters of religious practices such as *talaq-e-biddat*, but for the legislature to make any law on the same. They had also submitted in the Supreme Court that they would issue advisories to the members of the community against this practice.

3. In spite of the Supreme Court setting aside *talaq-e-biddat*, and the assurance of AIMPLB, there have been reports of divorce by way of *talaq-e-biddat* from different parts of the country. It is seen that setting aside *talaq-e-biddat* by the Supreme Court has not worked as any deterrent in bringing down the number of divorces by this practice among certain Muslims. It is, therefore, felt that there is a need for State action to give effect to the order of the Supreme Court and to redress the grievances of victims of illegal divorce.

4. In order to prevent the continued harassment being meted out to the helpless married Muslim women due to *talaq-e-biddat*, urgent suitable legislation is necessary to give some relief to them. The Bill proposes to declare pronouncement of *talaq-e-biddat* by Muslim husbands *void* and illegal in view of the Supreme Court verdict. Further, the illegal act of pronouncing *talaq-e-biddat* shall be a punishable offence. This is essential to prevent this form of divorce, wherein the wife does not have any say in severing the marital relationship. It is also proposed to provide for matters such as subsistence allowance from the husband for the livelihood and daily supporting needs of the wife, in the event of husband pronouncing *talaq-e-biddat*, and, also of the dependent children. The wife would also be entitled to custody of minor children.

5. The legislation would help in ensuring the larger Constitutional goals of gender justice and gender equality of married Muslim women and help subserve their fundamental rights of non-discrimination and empowerment.

6. The Bill seeks to achieve the above objects.

NEW DELHI; SNEHLATA SHRIVASTAVA.

The 15*th December,* 2017. *Secretary General.*

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